



September 8, 2005

To All USAID/Armenia Implementing Partners:

On 29 June 2005, the Law of Armenia on Currency Regulation and Currency Control came into effect. Many of our partners have inquired as to the new law's impact on their operations. On August 18, 2005, Deputy Mission Director Karl Fickenschner, Regional Legal Advisor Ann Marie Yastishock and Contracting/Agreement Officer David Brown met with Mr. Ashot Mkrtchyan, Head of the Monetary Policy Development Department and Mr. Vardan Aramyan, Head of the Economic Relations Division of the Monetary Policy Department of the Central Bank of Armenia (CBA) to discuss the new law. The purpose of this letter is to clarify USAID/Armenia's position on the law's implementation vis-à-vis our partner's payments in dollars or local currency, based on the CBA's own explanations and interpretations.

Chapter 1, Article 3 of the law defines two classes of entities operating in Armenia: "residents" and "non residents."

Residents are defined as

- a) individual entities (except for sole entrepreneurs) that have spent in Armenia 183 and more days in a 12-month period beginning or ending from January 1 to December 31, or whose center of key interests is the Republic of Armenia, and individual entities, temporarily working in Armenian government agencies and institutions of local governing abroad;
- b) organizations incorporated and registered in Armenia and sole entrepreneurs;
- c) Armenian embassies, consular sections and troops, located abroad;
- d) Armenian permanent representative offices in international organizations; etc.

Non-residents are defined as

- a) individual entities that are not residents, including those in public service abroad in temporary work in Armenia;
- b) organizations established abroad, their branches and representative offices;
- c) foreign embassies, consular sections, troops and international organizations in Armenia and their supervisors, other employees and their family members that are not citizens of Armenian;
- d) branches and representative offices of non-residents specified in this point ("b"), located in Armenia; and other entities that are not defined as residents.

For purposes of the law, the definition of "non residents" applies to USAID and all of its non-Armenian (foreign) partners registered in Armenia (regardless of your registration

type, e.g., branch, representational office, etc.). Therefore, partners such as ABA/CEELI, PA Consulting or Chemonics that are legally organized or incorporated outside of Armenia are considered “non residents.” The fact that a non-Armenian firm or organization has merely registered under the Civil Code in order to conduct business within the Republic of Armenia does not exclude that firm or organization from the definition of non resident. Partners such as Mission Armenia and Cascade Credit that are established or organized in accordance with the laws of Armenia are considered “residents.”

This is an important distinction because as explained by the CBA, transactions between a “non resident” and a “resident” legal entities as well as sole entrepreneurs (at least one party should not be a natural person) may be denominated in their business agreements in any currency such as dollars and paid in dollars. For example, contracts, grants or cooperative agreements between USAID and “resident” or “non resident” legal entities (or sole entrepreneurs) may be denominated in dollars, because at least one party, i.e. USAID, is a “non resident.” Transactions between two “non residents” may also be denominated and paid in dollars. Transactions between two Armenian “residents,” however, may only be denominated in drams and paid in drams.

It is important to note that AIDAR 752.225-71(a) and the Mandatory Provisions for U.S. and non U.S. Nongovernmental Recipients require that payment to local businesses, dealers, and producers normally be in the currency of the cooperating country (Armenian Dram).

The above examples apply to goods and commodities. The payment of salaries is treated differently under the law. According to the CBA, Chapter 3, Article 6 of the law as well as Articles 178 and 180 of the Labor Code require that within Armenia salaries, must be denominated and paid in Dram.

USAID naturally expects its partners to comply with all applicable laws, including local labor and currency laws. USAID regulations also still require you to comply with the limits of the currently applicable U.S. Government-wide local compensation plan. Under those regulations, USAID can not reimburse you for the salaries of local employees that are in excess of that local compensation plan without a waiver. We recognize that the combination of these requirements may affect some of your current business practices. If you anticipate problems in implementing your program under these combined requirements, you should work with your Cognizant Technical Officer and my office to find a solution for your particular circumstances.

According to the CBA, the law will not be retroactively applied. Existing contracts being implemented at the time the law became effective may continue to denominate contracts for goods and services in dollars or pay for such goods and services in dollars. This applies regardless of whether the transactions are between “nonresidents” and “residents.” However, any amendments, modifications or extensions to an existing contract will be considered to be new contracts by the CBA and therefore must comply with the new law.

Finally, the CBA explained that enforcement of the new law is the responsibility of the CBA for entities licensed or regulated by the CBA, the Ministry of Finance and Economy

(MoFE) for entities licensed or regulated by the MoFE, and the State Tax Administration for all other entities. For purposes of compliance with the new law, most of our partners will be subject to inspection by the State Tax Administration.

We hope that this letter helps to eliminate some of the confusion surrounding the application of this new law. If questions still exist, please work with your Cognizant Technical Office and my office and we will find a solution that fits your particular situation.



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